

Discontinuance and Sale of Roads Rights of Way and Drainage Reserves



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RESPONSIBLE EXECUTIVE	Chief Finance Officer
POLICY TYPE	Council
POLICY OWNER	Manager Property Services

REVISION RECORD	Version	Revision Description
11 December 1995	1	Adopted by Council
26 May 2008	2	Amended by Council
4 May 2010	3	Amended by Council
22 May 2017	4	Adopted by Council

1. Purpose

The purpose of the Discontinuance and Sale of Roads, Rights of Way and Drainage Reserves Policy is to provide guiding principles to facilitate the Discontinuance and disposal of Roads, Reserves and minor parcels of land that are no longer reasonably required for access or for the purpose they were originally set aside for or for any other public purpose.

2. Scope

The policy will be applied by Council officers and will provide guidance for the general public associated with the sale of minor parcels of land such as Discontinued Roads and Reserves that are no longer required, it will not apply for other Council owned land.

3. Governance Principles and Council Plan alignment

3.1 Governance Principles

This Policy aligns with the following principles

Principle (a) - Council actions are to be made and actions taken in accordance with the relevant law

Principle (b) - priority is to be given to achieving the best outcomes for the municipal community, including future generations.

Principle (g) - the ongoing financial viability of the Council is to be ensured.

Principle (i) - the transparency of Council decisions, actions and information is to be ensured.

3.2 Council Plan Alignment

Strategic Direction: Well-governed - Council will be collaborative, accountable, transparent, responsive, well-informed, and efficient.

Strategy: Hold ourselves to the highest standard of governance and integrity.

The Policy Framework directly addresses the improvements recommended during the Governance Review.

4 Policy Details

The *Local Government Act 1989* and *Local Government Act 2020* set out the statutory requirements for Road Discontinuances and sales managed in the Victorian local government sector. As part of our commitment to meeting the requirements of the Acts and demonstrating good governance, this policy outlines Council's approach in complying with the legislation and providing consistent and equitable principles for the Discontinuance and sale of Roads and Reserves and minor land parcels

4.1 Commencement of Statutory Procedures

If it is considered that a Road or Reserve is no longer reasonably required for the purpose for which it was set aside or some alternative municipal purpose, officers may investigate the suitability of Discontinuance and sale by private treaty, public tender or public auction or alternatively retention for municipal purposes.

However, if there is an established community use or other Council use for a Road or Reserve the land shall not be sold.

A resolution of Council is required for a final decision on a proposed Discontinuance and sale of Roads or Reserves after the completion of the statutory procedures.

4.2 Allocation and Division

Land is to be offered as near as is practical, equally amongst abutting owners. Where a property owner is found to have been in clear occupation of the same area for at least the last fifteen (15) years, that owner may be offered first opportunity to purchase the land. Council reserves its right to apportion the land at its sole discretion. Division of land between multiple owners will be carried out with consideration to the efficient operation of drainage or service authority assets.

Should an abutting owner not wish to purchase the portion of land offered, that portion may be offered to another abutting owner.

Should the other abutting owner also not wish to purchase that portion, the land may be offered to the adjoining properties on either side of the immediate abutting properties.

In the event that a portion of land would become landlocked if Council were to sell other portions of the Discontinued Road, the sales process shall be deferred until resolved.

Letters to owners shall invite replies within sixty (60) days of the date of the letter. If no reply is received within this period, those owners shall be deemed to be un-willing to purchase that section of land offered to them.

Should both abutting owners wish to purchase the entire section of land offered to them, both parties will be invited to submit an offer for that section. Offers shall not be less than the sum of the original offers conveyed by Council.

Offers received which provide the most equitable return to Council may be accepted by the Policy Owner on behalf of Council, subject to the completion of the statutory requirements.

Where no agreement can be reached for the purchase of any portion of the land, the land shall remain vested in Council until such agreement can be reached. The owners of any property in occupation of the land may be directed to remove all buildings and obstructions from the land immediately, as is Council's right as owner of the property.

4.3 Financials

Discontinued Roads and Reserves will be sold at Market Value. The Market Valuation must be no older than 6 months prior to the date of sale. If negotiations have not have been completed within this time then a new Market Valuation will be conducted.

The price affixed by Council on any portion of Discontinued Road or Reserve shall not be less than the amount fixed annually by Council in its Schedule of Fees & Charges.

4.3.1 Price Reductions

In exceptional circumstances, Council may, at the discretion of the Manager Property Services offer a one-time only further discount of up to 50% of the market value. An exceptional circumstance may arise where land:

- Is currently occupied by purchasers and is not capable of being reinstated for public use;
- has been exclusively occupied in excess of 15 years.

The discounts will only apply for residential properties.

In order to qualify for the price reduction on parcels claimed to have been occupied, property owners are required to supply as a minimum a Statutory Declaration attesting to the extent of the occupation plus other supporting documentation as required by Council.

No discount is available to a prospective purchaser who is occupying land who has been directed to cease occupation of that land.

4.3.2 Disagreement with Purchase Price

If a prospective purchaser disagrees with the valuation on which the purchase price is based, they may submit an independent valuation prepared by a Certified Practising Valuer. The Policy Owner will consider the independent valuation provided and may (but in no way is obliged to) amend the purchase price if they consider it appropriate.

4.3.3 Costs

A fee applies to all applications as specified in Council's fees and charges register. This fee will be adjusted annually in accordance with the CPI.

All costs incurred by Council in association with the Discontinuance and sale process are to be passed on to purchasers and where applicable will be shared equally amongst the

applicants. Typical costs include legal fees, survey costs, Land Registry costs, administrative costs, public notification costs, valuation fees and subdivision costs where applicable.

Each purchaser shall bear their own legal and conveyancing costs associated with the transfer of the land. The purchaser shall be responsible for the preparation and lodgement of the Transfer of Land document and payment of applicable stamp duty.

4.3.4 Land Settlement

The full purchase price of all land sold shall be paid to Council at the time of settlement.

Transfer of the land shall not be completed by Council until the full purchase price including associated costs and any interest are paid in full to Council.

The purchaser is to consolidate the titles. The purchaser will need to enter into an agreement under section 173 of the Planning and Environment Act 1987 (section 173 agreement), at the purchasers cost.

4.4 Other Principles

Where the Discontinued Road or Reserve is not able to be sold immediately, an application may be prepared for obtaining duplicate Certificate of Title from Land Registry in Council's name.

Council discourages the unauthorised occupation of Roads, or Reserves and may take steps to remove such illegal occupation. Where Council resolves not to proceed with a Discontinuance, steps may be taken to ensure that the land becomes and remains accessible for the purpose for which it was set aside, including directing removal of any obstructions or buildings from the land in accordance with clause 207 and section 11 of the Local Government Act 1989.

Council has the right to place an easement or covenant, on or over the land in order to protect its existing or future interest in the land. Existing easements and covenants will remain after any discontinuance.

If there is a requirement by a statutory authority to relocate any assets within the subject land all costs will be borne by the purchaser.

As a condition of sale, Council may require a purchaser to grant an easement in either its or other infrastructure authorities' favour over all or part of the land being transferred, which must be registered on title. The purchaser may be required to pay for the cost of the preparation and lodgement of the creation of easement document(s) at the Land Registry.

Council will only consider the Discontinuance of a Government Road where there is significant community benefit or a strategic outcome to justify the decision for Council to carry out the Discontinuance. Noting that the resulting land will vest in the Crown not Council.

5 Key Stakeholders (if applicable)

Not applicable

6 Internal and External Assessments

Officers from Roads and Drainage Department and Contract Valuer have been consulted in the preparation of this policy. Also benchmarking with other local government areas has occurred.

7 Risk Assessment

No requirement for Risk Assessment.

8 Delegation and Authorisation

Chief Executive Officer

Manager Property and Team Leader Property Services have administrative function necessary to give effect to power to discontinue roads and give notice before selling or exchanging land.

9 Gender Impact Assessment

A Gender Impact Assessment is not required for this Policy.

10 Privacy Impact Assessment

A Privacy Impact Assessment is not required for this Policy.

11 Human Rights Charter

This policy has been reviewed against and complies with the Charter of Human Rights and Responsibilities Act 2006.

12 Roles and Responsibilities

Role	Responsibility
Council	Authorises new Council policies and material updates to Council policies where Council is legally required to have a policy position, or on other issues that need a strategic position as a guide or direction to management and the community.
Manager Property Services	Responsible for the administration of the Policy

13 Related documents

13.1 Legislation

- Local Government Act 1989
- *Local Government Act 2020*
- *Subdivision Act 1988*
- *Gender and Equality Act 2020*
- *Road Management Act 2004*
- *Planning and Environment Act 1987*
- *Land Act 1958*
- *Limitations of Actions Act 1958*

13.2 Documents and resources

- *Community Engagement Policy*
- *Gender Impact Assessment*

14 Definitions

Term	Definition
Council	Kingston City Council
Market Value	Market value of the land means the value as determined by a Certified Practising Valuer on the basis of the “before and after method” taking into consideration commonly and legally accepted methodology.
Discontinue/Discontinuance	In this policy means the exercise of power under clause 3 of schedule 10 <i>Local Government Act 1989</i> in relation to a Road or the removal of reserve status in relation to a Reserve under section 24A of the Subdivision Act 1988
Government Road	A Road established on the parish plan and held in the ownership of the Crown
Road/s	the same meaning as is set out in section 3(1) of the <i>Local Government Act 1989</i> and includes rights of way.
Reserve/s	a narrow parcel of land such as a drainage reserve set aside as a reserve on a plan of subdivision but not set aside for recreational purposes.